

VZCZCXYZ0025
RR RUEHWEB

DE RUEHKE #0178/01 0451455
ZNY CCCCC ZZH
R 141455Z FEB 07
FM AMEMBASSY KINSHASA
TO RUEHC/SECSTATE WASHDC 5602
INFO RUEHXR/RWANDA COLLECTIVE
RUCNSAD/SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
RUEAIIA/CIA WASHDC
RHMFISS/HQ USEUCOM VAIHINGEN GE
RUFOADA/JAC MOLESWORTH RAF MOLESWORTH UK
RUCPDOG/DEPT OF COMMERCE WASHDC
RUEATRS/DEPT OF TREASURY WASHDC

C O N F I D E N T I A L KINSHASA 000178

SIPDIS

SIPDIS

E.O. 12958: DECL: 02/06/2017
TAGS: [EMIN](#) [EINV](#) [KHUM](#) [PGOV](#) [CG](#)
SUBJECT: TRIAL OPENS IN ANVIL MINING CASE

REF: 06 KINSHASA 1624

Classified By: EconOff W. Brafman for reasons 1.4 b/d.

¶1. (U) Summary. The criminal trial of three civilians and several FARDC soldiers in a Katanga military court is increasing attention on the DRC's extractive industries. A GDRC military court in Lubumbashi, Katanga province is hearing preliminary matters in the case, which arises from the widely-reported October 2004 violence in Kilwa, Katanga. The trial is noteworthy because of the rank of one of its military defendants, its inclusion of three civilians -- all of whom worked for Anvil Mining at the time of the events -- and because of its possible precedential effect. End Summary.

Background

¶2. (C) The trial arises from the FARDC's killing of dozens of villagers in Kilwa, Katanga in October 2004. Anvil Mining, an Australian company, allegedly provided logistical support to the military during this incident, which MONUC subsequently investigated. The incident received significant domestic and international attention, particularly from Australian media. MONUC and local and international NGOs then pressured the government to investigate the incident. In October 2006, the Chief Military Prosecutor in Katanga indicted seven military officers and three civilians for their alleged involvement in the incidents. The military officers include Colonel Ilunga Admard, 38th Brigade Commander and the highest ranking military officer the GDRC brought to trial during the Transition. According to MONUC, the prosecutor was recalled to Kinshasa for three weeks in October 2006 by his superiors to express their displeasure with his decision to proceed with the case.

Current Status

¶3. (C) The five-judge panel opened proceedings December 12, but thus far the trial has only proceeded in fits and starts. It reconvened on December 27, then adjourned until January 18. Defendant Pieter van Niekerk, an Anvil security manager from South Africa, has attended all court hearings except the initial one. (Note: Niekerk says he was in South Africa at the time of the incident and thus never involved. End note.) The other two civilians, one from South Africa, the other from Canada, have since left the company and have not attended the hearings. The indictment is apparently unclear as to whether the prosecutor is also charging Anvil itself. Proceedings in January adjourned once again after Colonel Admard's counsel filed a motion asking the presiding judge to

recuse himself on the grounds of partiality. Another judge has replaced him temporarily for the purposes of deciding the motion. (Note: The MONUC human rights officer told EconOff he finds Admard's delay tactics curious, given that he has now been detained for 18 months, with no prospect of release before the end of the trial. End note.)

Serious concerns

¶4. (C) A debate, even within MONUC, centers around the right to try the civilians in military court. GDRC authorities claim that military court jurisdiction over civilians is legal because neither the Constitution or any statute expressly prohibit it. Further, the prior Transitional Constitution, which may be applicable in absence of other governing law, gives military courts jurisdiction over persons accused of using a "weapon of war." The trial panel has denied the civilian defendants' request to send this issue to the DRC's Supreme Court for a ruling.

¶5. (C) Regardless of the forum in which this case is heard, valid concerns remain about whether the process will be fair and transparent. The DRC's justice system is notoriously corrupt and inefficient, with the judgment often favoring the person willing to pay the most bribes. Anvil officials have already alleged privately that three judges hearing the case have asked the company for bribes. (Comment: Anvil itself has not been entirely forthright in this matter. In exchanges with MONUC and the press, it changed its characterization of involvement in the Kilwa incident. End comment.)

Comment

¶6. (C) Whatever the outcome of the Kilwa trial, potential investors will be watching closely to see if the process is transparent and fair. Human rights groups, who have frequently criticized the many abuses carried out by the Congolese army, will also be watching the case closely. End comment.

MEECE